IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 5373 of 1992

Between:

1 S.Manikyamma, W/o. Koteshwar Rao,
R/o. China Ganjam, Prakasam Dist.
2 S.Viswanatham, S/o. Koteshwar Rao,
R/o. China Ganjam, Prakasam Dist.
3 M.Venkaiah, s/o. Lakshmaiah
R/o. China Ganjam, Prakasam Dist.

..... PETITIONERS

AND

1 The Govt. of A.P. rep.by it's secretary,
Revenue Department, Secretariat Buildings,
Hyderabad.
2 The District Collector, Prakasam District.
3 The Mandal Revenue Officer, China Ganjam (M),
Prakasam Dist.
4 Atla Venkateswara Reddy,
R/o. Pedda Ganjam (V), China Ganjam (M),
Prakasam Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue rule nisi calling for the records leading upto and inclusive of G.O.Ms.No.348, dt.28-3-1992 and quash the same by issuing a writ, order or direction more particularly in the nature of writ of certiorari and set aside the same as being illegal and arbitrary.

Counsel for the Petitioners: MR.SYED SHAREEF AHMED

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent No.4: A.NARASIMHA REDDY

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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Writ Petition No.5373 of 1992

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Order:

Heard both sides.

The petitioners herein, who claimed to be the sivai jamedars in respect of land in question, filed this writ petition, inter alia, seeking to assail the impugned proceedings in G.O.Ms.No.348, dated 28-03-1992, whereunder the revision filed by the respondent No.4 herein was allowed by the respondent No.1, as against the allowing of the claim of the petitioners by the appellate authorities.

The facts which need to be considered, though in brief, for disposal of the writ petition are that in respect of land in Sy.Nos.425/8, 9, 10 and Sy.Nos.427/18 and 28, admeasuring to Ac.0.48 cents situated at Peda Ganjam village it is stated that these lands are adjacent to the patta lands held by the petitioners and both of which were in occupation of them for the last several years and it is also further pleaded that they had purchased these lands by registered sale deeds dated 09-03-1951. However, in view of proposed acts of entry in the year 1985 by the respondent No.4, petitioners are filed an application before the Revenue Divisional Officer, Ongole, for the cancellation of the assignment in respect of the said lands, which appears to have been made in the year 1978. In the said enquiry, Mandal Revenue Officer concerned submitted a report on 21-12-1985 stating that the petitioners are in possession and enjoyment of the said land and further it is also revealed that though the assignment was made in the year 1978, however, the respondent No.4 has filed an application in the year 1985 for fixation of boundaries. In spite of the same, the Revenue Divisional Officer, Ongole, dismissed the said application of the petitioners on 16-08-1986. On further appeal before the joint Collector, Ongole, the same was allowed, as per the orders dated 30-12-1988 canceling the assignment made in

favour of the respondent No.4. Thereupon, the 4th respondent filed further revision before the Commissioner of Land Revenue, which was dismissed as per orders dated 14-08-1989 and thereupon the 4th respondent filed further revision to the 1st respondent beyond the period of limitation. However, without taking into consideration the delay aspect, the respondent No.1 has allowed the said revision upholding the claim of the respondent No.4 in pursuance of the assignment made in the year 1978. Therefore, the case of the petitioners challenging the said orders of the respondent No.1 is that respondent No.1 did not in fact give any credence to the petitioners' possession and enjoyment all along and absence of any possession with the respondent No.4 at any point of time and further the report of the Mandal Revenue Officer, which was obtained on 21-12-1985, was also not considered and neither any reasons nor any findings were given in this regard. Hence, the writ petition.

The learned Counsel appearing for the petitioners by taking through the entire orders submits that the petitioners' possession, as confirmed by the report of the Mandal Revenue Officer is totally unconsidered. Therefore, the matter requires to be reconsidered and the orders of the 1st respondent needs to be set aside. Though the land was alleged to have assigned in the year 1978 to the respondent No.4, but however, respondent No.4 was never in possession nor was serious to come into possession, which fact can be culled out due to the application filed by him in the year 1985 for fixation of boundaries.

Contesting the claim, the petitioners' objections have been denied and it was further asserted that having regard to the assignment already made in favour of the respondent No.4, the petitioners do not have any right either for possession or for assignment as such.

Considering the submissions made and on perusal of the material, the question, which has to be considered in this writ petition is, whether in respect of the land in question the claim of the petitioners on the face of the assignment alleged to already been made in the year 1978 is sustainable.

Admittedly, in this case the petitioners are having their own patta lands adjacent to present disputed land. However, at one stage it was stated that they came to be in possession in pursuance of a sale deed dated 09-03-1951. However, ultimately it was stated that they have been in continuous occupation. There is no dispute to the

fact that the said land was assigned in favour of the respondent No.4 in the year 1978 and said assignment was not challenged in any proceedings in any manner by the petitioners at any point of time. It is only on the allegation that the respondent No.4 is trying to make encroachment, the petitioners have filed application before the Revenue Divisional Officer complaining that any such action will be resulted into the present proceedings and also different remedies at different levels. Though, initially the authorities are rejected the petitioners claim, however the Joint Collector apparently by taking into consideration that petitioners are the sivai jamedars, who need to be given preference, sought to cancel the assignment made in favour of the respondent No.4. Ultimately, respondent No.4 preferred revision before the respondent No.1 and sought to proceed on the ground that having regard to the fact that the assignment was already made as long back as in the year 1978, and the same having not been challenged, the petitioners cannot have any right as such. There is no dispute to these facts. No challenge has been made in regard to the assignment even after the petitioners came to know about such assignment. The present proceedings arise only out of an application filed by the petitioners complaining against the alleged acts of interference by respondent No.4 sometime in the year 1985. Though in the said enquiry the Mandal Revenue Officer has given report about the petitioners' possession that would not in any way create any right, much less take out any existing rights in favour of the respondent No.4. Mere Possession as such would not in any way confirm any right in favour of any person. The fact remains that assignment was made in the year 1978 and the same has become final since it was remained unchallenged even by the petitioners.

It is now well settled that the rights of Sivai Jamedar cannot be enlarged into any absolute rights, unless proper grant is made by way of assignment or otherwise. In fact, the rights of the Government are sufficiently protected and remain unaffected. More so, when an assignment is made to a person it creates substantive rights, which hold far better and stand on higher footing than any other persons, including sivai jamedars. Therefore, the petitioners have absolutely no enforceable right against the respondent No.4.

In the circumstances, it is to be held that as long as the assignment holds good and remains unchallenged it is not open for the petitioners in respect of any nature of claim or possession as alleged, to set up their own independent right, title or interest of whatsoever nature. I do not find any merits in the claim of the petitioners and as

rightly observed by the respondent No.1, the petitioners cannot make any claim as such.

Accordingly, the Writ Petition is dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 08-11-2004.

Skmr

To

1 The Secretary, Revenue Department,

the Government of Andhra Pradesh,

Secretariat Buildings, Hyderabad.

2 The District Collector, Prakasam District.

3 The Mandal Revenue Officer, China Ganjam (M),
Prakasam District.
4. 2CCs to G.P. for Revenue, High Court Buildings, Hyderabad, (OUT).

5. 2CD copies.